

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**February 26, 1998**

DIVISION ONE

Court convened at 9:00 A.M.

Present: Spencer, P.J., Ortega, J., Vogel (Miriam A.), J., Dunn, J. (Assigned), and S. Beaux, Deputy Clerk.

B110353      Chaplan  
                 v.  
                 Creative Scientific Technology et al.

Merits:  
Argued by Randolph M. Sharon for appellants and respondent having waived argument. Cause submitted.

B102984      Poorsalimi  
                 v.  
                 Those Underwriters at Lloyd's of London, etc.

Merits:  
Argued by Sassoon Sales for appellant and by Craig G. Kline for respondent. Cause submitted.

B108639      Dept. of Children Services  
                 v.  
                 Marcellus P.

Merits:  
Argued by Leonard L. Linares for appellant and by Gary P. Gross, deputy county counsel, for respondent. Parties waive the presence of Justice Masterson. Cause submitted.

DIVISION ONE (Continued)

B112669     Leetham  
              v.  
              Yosemite Mountain Ranch, Ltd.

Merits:  
Argued by John S. Chang for appellant and by John H. Ernster for  
respondent. Cause submitted.

B110383     Ray  
              v.  
              County of Los Angeles et al.

Merits:  
Argued by April S. Ray, in propria persona and by Marc J. Wodin for  
respondents. Cause submitted.

B109921     Lindmark  
              v.  
              Papell et al.

Merits:  
Argued by Roger M. Lindmark, in propria persona and by Ronald P.  
Kaplan for respondent. Cause submitted.

B100132     Hurst et al.  
              v.  
              Kriegler-Buhl

Argument waived, cause submitted.

B099745     Trachtman et al.  
              v.  
              California Cryobank Inc.

Merits:  
Argued by James B. Kropff for appellants and by Peter Aronson for  
respondent. Parties waive the presence of Justice Masterson. Cause  
submitted.

DIVISION ONE (Continued)

B107765     Provan  
              v.  
              Zalamea

Merits:

Argued by Robert Burlison for appellant and by Kurt Eggert for respondent Provan and Gregory S. Page for respondents General American Financial, et al. Cause submitted.

Justice Vogel leaves the bench.

B108163     Starr  
              v.  
              Hestrin

Merits:

Argued by Steven C. Gambardella for appellant and by Carmen Vigil for respondent. Parties waive the presence of Justice Masterson. Cause submitted.

B109505     Quackenbush et al.  
              v.  
              Reinsurance Association of America et al.

Merits:

Argued by Stephen W. Schwab for appellants Reinsurance Assoc., Stuart M. Richter for appellant Borg Warner, James M. Harris for appellant Illinois Director of Insurance, Karl L. Rubinstein for respondent Quackenbush and Rowe Snider for respondent Intervening Guaranty. Cause submitted.

Court adjourned.

## February 26, 1998-Continued

## DIVISION ONE (Continued)

[illegible]

The judgment is affirmed.

Spencer, P.J.

We concur: Ortega, J.  
Vogel (Miriam A.), J.

B110522 People (Not for Publication)  
v.  
Carrillo

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.  
Dunn, J. (Assigned)

[illegible]

The judgment is affirmed.

Spencer, P.J.

We concur: Ortega, J.  
Masterson, J.

## February 26, 1998-Continued

## DIVISION ONE (Continued)

B114889 People (Not for Publication)  
v.  
Clarke

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.  
Masterson, J.

[illegible]

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.  
Masterson, J.

B110281 People (Not for Publication)  
v.  
Stephens

The judgment is affirmed.

Spencer, P.J.

We concur: Ortega, J.  
Vogel (Miriam A.), J.

## DIVISION ONE (Continued)

The order is affirmed.

We concur: Ortega, J.  
Vogel (Miriam A.), J.

The appeal is dismissed.

We concur: Ortega, J.  
Masterson, J.

The Court:

The petition is denied.

Spencer, P.J., Vogel (Miriam A.), J., Masterson, J.

## February 26, 1998-Continued

## DIVISION ONE (Continued)

B106545 People (Not for Publication)  
v.  
Candler

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Ortega, J.

B111308 People (Not for Publication)  
v.  
Rodriguez

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Ortega, J.

B112334 People (Not for Publication)  
v.  
Hernandez III

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Ortega, J.

## DIVISION ONE (Continued)

[illegible]

The true finding on the allegations involving Arkansas Case No. CR-87-246 is reversed; in all other respects, the judgment is affirmed, and the cause is remanded to the trial court with directions to modify Thomas's sentence by reducing it from 115 years to life to 110 years to life, and to issue a corrected abstract of judgment.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Ortega, J.

B106482      Beals      (Not for Publication)  
v.  
Los Angeles County Metropolitan Transportation

The judgment is affirmed. The MTA and the individual defendants are awarded their costs of appeal.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.  
Masterson, J.

## DIVISION TWO

B114349      Wooden      (Certified for Publication)  
v.  
Raveling

The judgment (order of dismissal) is reversed. The matter is remanded with instructions to overrule the demurrer and order defendant to answer. Plaintiff to recover costs on appeal.

Zebrowski, J.

We concur:   Fukuto, Acting P.J.  
                      Nott, J.

February 26, 1998-Continued

## DIVISION TWO (Continued)

[illegible]

The Court:

The judgment is affirmed.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

B101654      People                                  (Not for Publication)  
v.  
Smith, et al.

The judgments of convictions are affirmed. The abstracts of judgment are ordered corrected to reflect 78 days of presentence conduct credit for defendants Smith, Cook and Bryant (Cryer). The trial court is to redetermine defendant Bullock's presentence credits pursuant to Penal Code section 2933.1.

Zebrowski, J.

We concur:   Boren, P.J.  
                      Nott, J.

DIVISION THREE

B102106      Rosario E. Sobremonete, etc. et al.  
v.  
Superior Court of Los Angeles County  
Bank of America National Trust and Savings Association, etc.

Filed order modifying opinion. (No change in the judgment.)

## February 26, 1998-Continued

### DIVISION THREE (Continued)

[illegible]

The order is affirmed.

Aldrich, J.

We concur:   Croskey, Acting P.J.  
                    Kitching, J.

B111904 People (Not for Publication)  
v.  
Alonzo N.

The order under review is affirmed.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

DIVISION FOUR

B082253 Torkan (Not for Publication)  
B084667 v.  
Kermanshahchi, et al.

The judgment is affirmed. The post-judgment order is modified to reflect an award of attorney fees of \$32,310. Each party is to bear his own costs on appeal.

Hastings, J.

We concur: Epstein, Acting P.J.  
Baron, J.

DIVISION FOUR (Continued)

B116550     People  
              v.  
              Aguilar

Filed order modifying opinion. (Change in judgment.)

B103468     People  
              v.  
              Gonzalez

Filed order modifying opinion. Petition for rehearing is denied. (Change in judgment.)

B110095     People                                 (Not for Publication)  
              v.  
              Fernandez

The judgment is affirmed.

Hastings, J.

We concur:   Epstein, Acting P.J.  
                  Baron, J.

B110584     People                                 (Not for Publication)  
              v.  
              Kendrick

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur:   Epstein, J.  
                  Baron, J.

## February 26, 1998-Continued

## DIVISION FOUR (Continued)

B110856      People                                  (Not for Publication)  
v.  
Coates-Jarman

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Czuleger, J. (Assigned)

B108651	People v. Moreno	(Not for Publication)
B118797	In re Moreno on Habeas Corpus	

The judgment is affirmed. The petition is denied.

Baron, J.

We concur: Epstein, Acting P.J.  
Hastings, J.

DIVISION FIVE

B114961 First Healthcare Corporation et al. (Not for Publication)  
v.  
Superior Court, Los Angeles County  
(Hyman Podolsky, et al., r.p.i.)

The remittitur in *Podolsky I* is recalled to correct clerical order and clarify that our judgment was a general reversal. Let a peremptory writ of mandate issue directing respondent court to vacate its order of August 12, 1997, denying FHC's motion to limit the issues on remand to injunctive relief, and enter a new order granting the motion only insofar as plaintiffs seek restitutionary relief based on FHC's use of third-party guarantees through December 16, 1994. Petitioner FHC and real parties in interest to bear their own costs in connection with this writ petition.

Godoy Perez, J.

We concur: Grignon, Acting P.J.  
Armstrong, J.

DIVISION FIVE (Continued)

(Not for Publication)

B107014 Conservatorship of the Person and Estate of Estel Ray Stivers  
v.  
Celinda Tabucchi et al.  
Dorothy Stivers, as Trustee etc. et al.

The appeal is dismissed. Respondents Dorothy Stivers, as trustee of the Stivers Family Trust, and Lynn R. Jurlin, as conservator of Dorothy Stivers, are to recover their costs on appeal from Celinda Tabucchi personally.

Turner, P.J.

We concur: Grignon, J.  
Armstrong, J.

B110561 People (Not for Publication)  
v.  
Appleberry

The judgment is affirmed.

Godoy Perez, J.

We concur: Turner, P.J.  
Armstrong, J.

B116930 People (Not for Publication)  
v.  
Rivas

The judgment is affirmed.

Godoy Perez, J.

We concur: Grignon, Acting P.J.  
Armstrong, J.

## February 26, 1998-Continued

## DIVISION FIVE (Continued)

B110547 People (Not for Publication)  
B113767 v.  
Muldoon

The judgment is affirmed.

Godoy Perez, J.

We concur: Grignon, Acting P.J.  
Armstrong, J.

B115620 People (Not for Publication)  
v.  
Pea

The judgment is affirmed.

Godoy Perez, J.

We concur:   Turner, P.J.  
                      Grignon, J.

B110137      People                                  (Not for Publication)  
v.  
Rudolph R. Campos

The judgment is affirmed.

Turner, P.J.

We concur:    Armstrong, J.  
                         Godoy Perez, J.

DIVISION FIVE (Continued)

B112079 Deborah Fenno, as Administrator etc. (Not for Publication)

v.

Karen Chapman

The March 26, 1997, order settling the final account and final distribution is affirmed. Petitioner and respondent, Deborah Fenno, as administrator of the estate of Genaro James Fenno, is to recover her costs on appeal from objector and appellant, Karen Fenno Chapman.

Turner, P.J.

We concur: Grignon, J.

Armstrong, J.

B110975 People (Not for Publication)

v.

Frank Martinez

The judgment is affirmed.

Turner, P.J.

We concur: Grignon, J.

Godoy Perez, J.

B114857 People

v.

William Francis Hardeman

Filed order modifying opinion. (Change in judgment.)

February 26, 1998-Continued

DIVISION SIX

B111760      Barrette                                  (Not for Publication)  
v.  
Little et al.

The judgment is affirmed. Costs to respondents.

Yegan, J.

We concur:   Stone, P.J.  
                      Gilbert, J.

B098955      Tejinder S. Grewal et al.      (Not for Publication)  
v.  
Department of Water and Power of the City of Los Angeles

The judgment is reversed. Appellants shall recover their costs on appeal.

Stone, P.J.

We concur:    Gilbert, J.  
                             Yegan, J.

B107896 People (Not for Publication)  
v.  
Villa

The portion of the judgment finding appellant guilty of violating Health and Safety Code section 11377, subdivision (a) is affirmed. The portion of the judgment finding true appellant's prior felony convictions is reversed. The case is remanded to the trial court for retrial to determine the truth of the prior conviction allegations.

Stone, P.J.

We concur:    Gilbert, J.  
                         Coffee, J.

## February 26, 1998-Continued

## DIVISION SIX (Continued)

[illegible]

The judgment is affirmed.

Stone, P.J.

We concur:    Gilbert, J.  
                      Coffee, J.

B112361 Estate of Olsen (Not for Publication)

The judgment is affirmed. Costs to respondent.

Stone, P.J.

We concur:    Gilbert, J.  
                         Coffee, J.

B110407      Marriage of Boone      (Not for Publication)

The judgment of the trial court is reversed. This case is remanded with instructions to the trial court to (1) determine whether respondent Nancy B. Boone is entitled to an award of arrearages, if any, for the period after October 1, 1995; and (2) reconsider the motion for attorney's fees filed by respondent Nancy B. Boone. Appellant is awarded costs on appeal.

Coffee, J.

We concur:   Stone, P.J.  
                      Gilbert, J.

DIVISION SEVEN

136-98

THE HONORABLE C. ROBERT SIMPSON, JR., Judge of the Superior Court, Los Angeles County, is hereby assigned to assist the Court of Appeal, Second Appellate District, Division 7, as a justice thereof, from February 1, 1998, to February 28, 1998, and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: January 26, 1998

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council